

DOCKET FILE COPY ORIGINAL

RECEIVED

JUN - 8 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Implementation of Sections 3(n)
and 332 of the Communications Act

Regulatory Treatment of Mobile Services

GEN Docket No. 93-252

**OPPOSITION COMMENTS OF THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS**

**PAUL RODGERS
General Counsel**

**CHARLES D. GRAY
Assistant General Counsel**

**JAMES BRADFORD RAMSAY
Deputy Assistant General Counsel**

**National Association of
Regulatory Utility Commissioners**

1102 ICC Building
Post Office Box 684
Washington, D.C. 20044

(202) 898-2200

June 8, 1994

No. of Copies rec'd
List A B C D E

0+9

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

JUN - 8 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Sections 3(n)
and 332 of the Communications Act

Regulatory Treatment of Mobile Services

GEN Docket No. 93-252

**OPPOSITION COMMENTS OF
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS**

Pursuant to Sections 1.49, 1.52, 1.415, 1.419, and 1.429 of the Federal Communications Commission's ("FCC" or "Commission") Rules of Practice and Procedure,¹ the National Association of Regulatory Utility Commissioners ("NARUC") respectfully submits this opposition to the May 19, 1994 requests filed by MCI Telecommunications Corporation ("MCI") and GTE Service Corporation ("GTE") seeking reconsideration of certain aspects of the Commission's April 19, 1994 noticed² "Second Report and Order" ("2nd R&O" or "Order") [FCC 94-31], in the above-captioned proceeding.

Specifically, MCI - after correctly noting that the FCC's decision to "refrain" from preempting State regulation of the rates that LECs may charge CMRS providers for intrastate interconnection "is consistent with precedent and the general preservation of

¹ 47 C.F.R. §§ 1.49, 1.52, 1.415, 1.419, and 1.429 (1993).

² 59 Federal Register 18493 (April 19, 1994).

state/federal jurisdiction under OBRA...",³ - goes on to ask the Commission to "clarify its view that [S]tates may not utilize their lawful authority over the interconnection rates charged by landline telephone companies or over the "other terms and conditions" of CMRS offerings to erect or maintain prohibited barriers to CMRS entry." MCI petition at 14.

GTE wants the commission to basically expand the definition of CMRS service to include enhanced offerings, suggesting in its petition, at page 12, that the FCC clarify that "any service meeting the statutory standard for CMRS will be subject to Title II, even if it might otherwise be considered "enhanced" under Section 64.702 of the rules."

Perhaps the most obvious flaw in both of these vague requests is that they are, at best, premature. In both cases, the companies are asking the FCC to make broad conclusory legal determinations accessing the potential impact of a potentially unlimited variety of existing and possible future state regulations in the abstract - i.e., with no evidence that such regulations currently exist or will exist in the future. Neither MCI nor GTE provides the Commission with sufficient factual detail to allow an adequate assessment of their requests.

For example, the question of whether an otherwise lawful and nondiscriminatory State regulation that does not directly prohibit entry can be appropriately considered as a barrier to entry under

³ An appropriate admission given that the statute only preempts "rates charged by" CMRS providers not rates charged to such carriers for interconnection.

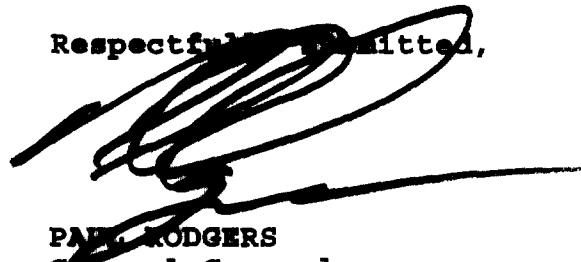
the statute, as well as the related question of whether a regulation actually is an "entry" regulation, cannot be decided in the abstract. Even if the FCC provided the requested clarification, NARUC respectfully suggests that it would provide no enlightenment to either the industry or states as to the "type" of regulation that "might potentially" be prohibited. To the extent that any existing or potential State regulations arise that a CMRS entrant feels qualifies as entry regulation under the statute, the question will be litigated, at least in the first instance, before this Commission. Similarly, the requested GTE clarification, which is also clearly rooted in the possible future existence of inconsistent State regulations affecting intrastate enhanced services, will not provide the States or industry with any guidance.⁴

⁴ Even with the provided clarification, GTE will still have to deal in a service specific context with at least State "other terms and conditions" which can vary from State to State. Moreover, as suggested by our earlier comments concerning CMRS-to-CMRS interconnection rates in our May 19, 1994 Petition for Reconsideration, at 8, NARUC believes generally that, except for basic services rates, enhanced services rate preemption cannot be supported. States are vested, pursuant to 47 U.S.C.A. § 152(b) with exclusive power of intrastate rates, regardless of the type of rate, unless Congress has acted to limit that authority. Although we lack additional insight as to the precise service or services GTE is positing, it does not appear Congress has done so here. Compare, Louisiana Public Service Commission v. FCC, 476 U.S. 355, 368, 375 (1986); 47 U.S.C.A. § 201; and In the Matter of the Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Report No. CL-379, 2 FCC Rcd. 2910 (1987) at ¶ 8. A review of the legislative history of the Budget Act, and the tests provided for States to re-enter/continue rate regulation, clearly indicates that Congress intended the preemptive effects of that legislation to apply only to rates charged consumer end-users of basic services.

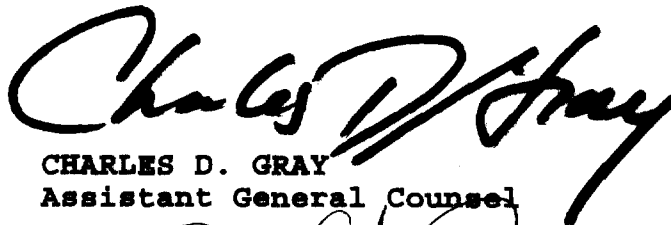
In any possible GTE scenario involving State regulation, the FCC will first have to make a service specific legal determination as to whether a particular "enhanced service" can even qualify as a CMRS under the statute.

Accordingly, NARUC respectfully requests that the Commission refuse to provide the MCI/GTE requested clarifications discussed.

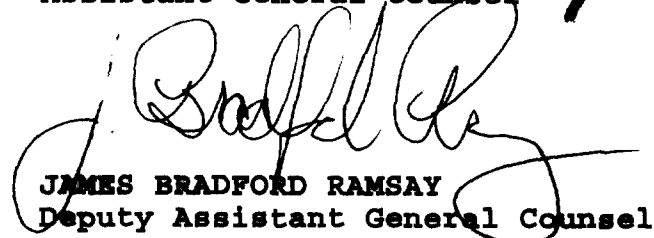
Respectfully submitted,



PAUL RODGERS
General Counsel



CHARLES D. GRAY
Assistant General Counsel



JAMES BRADFORD RAMSAY
Deputy Assistant General Counsel

National Association of
Regulatory Utility Commissioners

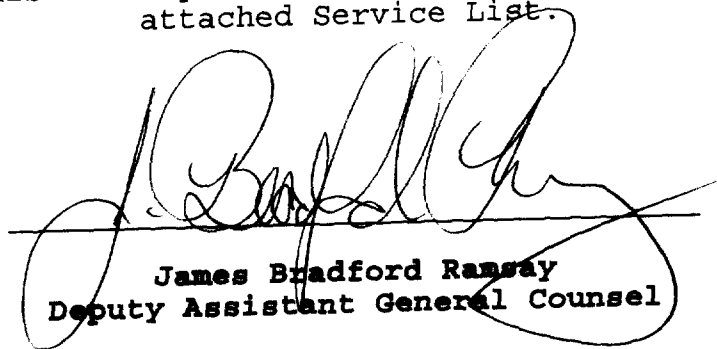
1102 ICC Building
Post Office Box 684
Washington, D.C. 20044

(202) 898-2200

June 8, 1994

CERTIFICATE OF SERVICE

I, JAMES BRADFORD RAMSAY, certify that a copy of the foregoing document was served, by first-class United States mail, postage prepaid, this 8th day of June, 1993, on all parties on the attached Service List.

A large, stylized handwritten signature in black ink, appearing to read 'J. Bradford Ramsay', is written over a horizontal line. The signature is fluid and cursive, with the last name 'Ramsay' being particularly prominent.

James Bradford Ramsay
Deputy Assistant General Counsel

National Association of
Regulatory Utility Commissioners

NARUC's June 8, 1994 Opposition

GTE Service Corporation
Gail L. Polivy
1850 M Street, NW
Suite 1200
Washington, D.C. 20036

MCI Telecommunications Corporation
Larry Blosser
Donald J. Elardo
1801 Pennsylvania Avenue, NW
Washington, D.C. 20006